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§ 821.13 Waivers.

Waivers of any rights provided by statute or regulation shall either be in writing or by stipulation made at the hearing and entered into the record, and shall set forth the precise terms and conditions of the waiver.

§ 821.14 Motions.

(a) *General.* Any application to a law judge or to the Board for an order or ruling not otherwise provided for in this part shall be by motion. Prior to the assignment of the proceeding to a law judge, all motions shall be addressed to the Case Manager. Thereafter, and prior to the expiration of the period within which an appeal from the law judge's initial decision may be filed, all motions shall be addressed to the law judge. At all other times, motions shall be addressed to the General Counsel.

(b) *Form and content.* Unless made during a hearing, motions shall be made in writing, shall state with particularity the grounds for the relief requested, and shall be accompanied by affidavits or other evidence relied upon. Motions introduced during a hearing may be made orally on the record, unless the law judge directs otherwise.

(c) *Replies to motions.* Except when a motion is made during a hearing, any party may file a reply, accompanied by such affidavits or other evidence as that party desires to rely upon, within 15 days after the date of service of the motion on that party. Upon notice to the parties, the law judge or the Board may, where appropriate, set a shorter time for filing a reply. Where a motion is made during a hearing, the reply may be made at the hearing, or orally or in writing within such time as the law judge may fix.

(d) *Oral argument; briefs.* No oral argument will be heard on a motion unless the law judge or the Board directs otherwise.

(e) *Effect of pendency of motions.* Except as provided in §§ 821.17(a) and 821.18(a), the filing or pendency of a motion shall not automatically alter or extend the time fixed in this part (or any extension thereof previously granted) for the parties to take any actions.

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§ 821.15 Motion to disqualify a Board Member.

A motion requesting that a Board Member disqualify himself or herself from participating in a proceeding under this part shall be filed in writing with the Board.

§ 821.16 Interlocutory appeals from law judges' rulings on motions.

Rulings of law judges on motions which are not dispositive of the proceeding as a whole may not be appealed to the Board prior to its consideration of the entire proceeding, except in extraordinary circumstances and with the consent of the law judge who made the ruling. Interlocutory appeals shall be disallowed unless the law judge finds, either orally on the record or in writing, that to allow such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to a party. If an interlocutory appeal is allowed, any party may file a brief with the Board within such time as the law judge directs. No oral argument will be heard unless the Board directs otherwise.

§ 821.17 Motions to dismiss, for judgment on the pleadings and for summary judgment.

(a) *Motions to dismiss petition for review or complaint.* A motion to dismiss a petition for review or a complaint may be filed in lieu of an answer, within the time limit for filing an answer set forth in § 821.24(c) or § 821.31(b). If such motion is not granted in its entirety, the answer shall be filed within 10 days after service of the law judge's order on the motion.

(b) *Motions to dismiss for lack of jurisdiction.* A motion to dismiss on the ground that the Board lacks jurisdiction may be made by any party at any time.

(c) *Motions for judgment on the pleadings.* A party may file a motion for judgment on the pleadings on the basis that no answer has been filed, or that the pleadings disclose that there are no material issues of fact to be resolved and that party is entitled to judgment as a matter of law.

(d) *Motions for summary judgment.* A party may file a motion for summary

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judgment on the basis that the pleadings and other supporting documentation establish that there are no material issues of fact to be resolved and that party is entitled to judgment as a matter of law.

(e) *Appeals of dismissal, judgment on the pleadings and summary judgment orders.* When a law judge grants a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment, and terminates the proceeding without a hearing, an appeal of such order to the Board may be filed pursuant to the provisions of § 821.47. When a motion to dismiss, a motion for judgment on the pleadings or a motion for summary judgment is granted in part, § 821.16 applies.

§ 821.18 Motion for a more definite statement.

(a) A party may, in lieu of an answer, file a motion requesting that the petitioner's statement of reasons and supporting facts in a petition for review or the Administrator's allegations of fact in a complaint be made more definite and certain. The motion shall cite the defects complained of and the details sought. If the motion is granted and the law judge's order is not complied with within 15 days after service thereof, the law judge shall strike the portion or portions of the petition for review or complaint to which the motion is directed. If the motion is denied, the moving party shall file an answer within 10 days after service of the law judge's order on the motion.

(b) A party may file a motion to clarify an answer in the event that the answer fails to respond clearly to the petition for review or the complaint.

§ 821.19 Depositions and other discovery.

(a) *Depositions.* After a petition for review or a complaint is filed, any party may take the testimony of any person, including a party, by deposition, upon oral examination or written questions, without seeking prior Board approval. Reasonable notice shall be given in writing to the other parties, stating the name of the witness and the time and place of the taking of the deposition, in accordance with the Federal Rules of Civil Procedure. A copy of

any notice of deposition shall be served on the law judge to whom the proceeding has been assigned or, if no law judge has been assigned, on the Case Manager. In other respects, the taking of any deposition shall be compliance with the provisions of 49 U.S.C. 46104(c).

(b) *Exchange of information by the parties.* The parties must exchange information in accordance with the Federal Rules of Civil Procedure. Copies of discovery requests and responses shall be served on the law judge to whom the proceeding has been assigned or, if no law judge has been assigned, on the Case Manager. In the event of a dispute, either the assigned law judge or another law judge delegated this responsibility (if a law judge has not yet been assigned or if the assigned law judge is unavailable) may issue an appropriate order, including an order directing compliance with any ruling previously made with respect to discovery.

(c) *Failure to provide or preserve evidence.* The failure of any party to comply with a law judge's order compelling discovery, or to cooperate with a timely request for the preservation of evidence, may result in a negative inference against that party with respect to the matter sought and not provided or preserved, a preclusion order, dismissal or other relief deemed appropriate by the law judge.

(d) *Failure to provide copy of releasable portion of Enforcement Investigative Report (EIR).* (1) Except as provided in § 821.55 with respect to emergency proceedings, where the respondent requests the EIR and the Administrator fails to provide the releasable portion of the EIR to the respondent by the time it serves the complaint on the respondent, the respondent may move to dismiss the complaint or for other relief and, unless the Administrator establishes good cause for that failure, the law judge shall order such relief as he or she deems appropriate, after considering the parties' arguments.

(2) The releasable portion of the EIR shall include all information in the EIR, except for the following:

(i) Information that is privileged;